

June 26, 2008

**2008 Legislation Relating to First Lien Mortgage Transactions - Effective
January 1, 2009**

Questions, Answers, and Administrative Interpretations

1. What changes have been made relating to the licensing requirements in Indiana for creditors who make first lien mortgage transactions?¹

Answer – Effective January 1, 2009, a person who is regularly engaged in Indiana as a creditor in first lien mortgage transactions, and who is funding the loan with their own assets or line of credit, must first obtain a license from the Indiana Department of Financial Institutions (“DFI” or “Department”). The licensing requirement is per licensed entity/creditor and does not apply to individual employees of a first lien mortgage licensee. [IC 24-4.4-2-401]

2. What is a first lien mortgage transaction?

Answer – A "first lien mortgage transaction" means a loan in which a first mortgage, or a land contract which constitutes a first lien, is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. [IC 24-4.4-1-301 (6)]

3. What structures are included in the definition of dwelling?

Answer – "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual condominium unit; cooperative unit; mobile home; or trailer that is used as a residence. [IC 24-4.4-1-301 (5)]

4. Does the First Mortgage Law apply to all first lien mortgage transactions?

Answer – No, the First Mortgage Law only applies to a consumer purpose first lien mortgage transaction:

- (a) that is secured by an interest in land in Indiana; and
- (b) the closing for which takes place after December 31, 2008. [IC 24-4.4-1-201 (1)]

First Mortgage Law does not apply to a first lien mortgage transaction if:

- (a) the debtor is not a resident of Indiana at the time the transaction is entered into; and
- (b) the laws of the debtor's state of residence require that the transaction be made under the laws of the state of the debtor's residence. [IC 24-4.4-1-201 (2)]

¹ For purposes of this informational piece, IC 24-4.4 *et seq.* relating to First Lien Mortgage Lending shall be referred to as the First Mortgage Law.

5. What other transactions are excluded from the First Mortgage Law?

Answer – This First Mortgage Law does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) A first lien mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
- (3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
- (4) A first lien mortgage transaction made:
 - (a) in compliance with the requirements of; and
 - (b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;the Indiana housing and community development authority established by IC 5-20-1-3.
- (5) A supervised financial organization.
- (6) An operating subsidiary that is majority owned, directly or indirectly, by a supervised financial organization to the extent the operating subsidiary is regulated by the chartering authority of the supervised financial organization.
- (7) A credit union service organization that is majority owned, directly or indirectly, by one (1) or more credit unions.
- (8) Agencies, instrumentalities, and government owned corporations of the United States, including United States government sponsored enterprises. This exclusion applies to these entities, not to other entities that originate loans for sale to these entities. [IC 24-4.4-1-202]

6. What is a supervised financial organization?

Answer – A "supervised financial organization" means a person that is:

- (a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States that authorizes the person to make loans and to receive deposits, including deposits into a savings, share, certificate, or deposit account; and
- (b) subject to supervision by an official or agency of a state or of the United States. Examples of supervised financial organizations are national and state banks, trust companies, corporate fiduciaries, savings associations, credit unions, savings banks, banks of discount and deposit, or industrial loan and investment companies organized or reorganized under Indiana law, the law of another state (as defined in IC 28-2-17-19) or United States law.

7. Who is a creditor under the new First Mortgage Law?

Answer – "Creditor" means a person:

- (a) that regularly engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and
- (b) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

The term does not include a person in a tablefunded transaction. [IC 24-4.4-1-301 (2)] In simpler terms, a creditor not only is listed on the loans documents, but is providing the funds for the first lien mortgage loan. See the definition of tablefunded in Item 9, below.

8. When is a creditor regularly engaged in first lien mortgage transactions?

Answer – A person is "regularly engaged" as a creditor in first lien mortgage transactions in Indiana if:

- (a) the person acted as a creditor in first lien mortgage transactions in Indiana more than five (5) times in the preceding calendar year; or
- (b) the person did not meet the numerical standards set forth in subdivision (a) in the preceding calendar year, but has or will meet the numerical standards set forth in subdivision (a) in the current calendar year. [IC 24-4.4-1-301 (10)]

9. What is a tablefunded transaction?

Answer – "Tablefunded" means a transaction in which:

- (a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and
- (b) the transaction is assigned simultaneously to the mortgage lender providing the funding not later than one (1) business day after the funding of the transaction. [IC 24-4.4-1-301 (13)]

10. How do I determine if I should be licensed as a Mortgage Lender with the DFI under the new First Mortgage Law or as a Loan Broker with the Secretary of State?

Answer – The initial question is: "Are you a creditor in the extension of first lien mortgage transactions?"

In answering that question, there are two issues:

- First, are you a creditor? Remember that a creditor (a) regularly engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and (b) is the person to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract. In short, did you extend first lien mortgages transaction payable in more than four (4) installments for which you were responsible to provide the funding (i.e. through your own funds, through a warehouse line of credit or through some other financing device that you have established).
- Also, remember that if you tablefund a transaction (Item 9, above) you are not a creditor for purposes of determining if you should be licensed with DFI under the new First Mortgage Law.

- If no, you do not need a license under the new law with the DFI. You may need a license (and certain registrations) under the Loan Broker Act found at IC 23-2-5 *et seq.*
- If yes, go to the next paragraph.
- Second, are you regularly engaged in extending first lien mortgage transactions? Remember that to be regularly engaged you must act as a creditor and funding agent on more than five (5) first lien mortgage transactions in Indiana in 2009.
 - If no, you do not need a license under the new law with the DFI. You may need a license (and certain registrations) under the Loan Broker Act found at IC 23-2-5 *et seq.*
 - If yes, you do need a license under the new Mortgage Licensing Law.

11. If I determine that I do not need a license under the new First Mortgage Law, am I finished?

Answer – No, go the Securities Division’s website of the Indiana Secretary of State which is found at <http://www.in.gov/sos/securities/loanBroker/LBInfoWP.htm> to determine if you meet the criteria for licensing or registration under the Indiana Loan Broker Act under at IC 23-2-5 *et seq.*

12. When do I need to obtain a license under the new First Mortgage Law?

Answer – All creditors required to be licensed under the new First Mortgage Law must obtain a license from the DFI by January 1, 2009 for the calendar year 2009.

13. How do I to obtain a license under the new First Mortgage Law?

Answer – While the Director is responsible to prescribe the application, it is the current intention of the DFI to designate the Nationwide Mortgage Licensing System (“NMLS”), which has been developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, to be used by licensees under the new First Mortgage Law beginning November 1, 2008 for the 2009 calendar year. This licensing system is web-based and will allow mortgage lenders to apply for, amend, update or renew their licenses or registrations using uniform forms from participating state agencies throughout the U.S. [IC 24-4.4-2-201 (10) and (11)] Specific details of how to use the NMLS will be provided later on the Department website.

14. What fees will I pay to become a licensee under the new First Mortgage Law?

Answer – Each applicant will pay an initial license fee as established from time to time by the Department under IC 28-11-3-5. The initial license fee as of January 1, 2009 for the calendar year 2009 will be \$1,000.00. Each licensee will pay an annual renewal fee as established from time to time by the Department under IC 28-11-3-5. The license will be renewed each year as of

December 31. Each licensee will pay examination fees as established from time to time by the Department under IC 28-11-3-5. The examination fees as of January 1, 2009 will be \$600 per examination day.

15. What criteria for granting a license under the new First Mortgage Law is the Department required to review?

Answer – A license may not be issued unless the Department finds that the financial responsibility, character, and fitness of:

- (a) the applicant and any significant affiliate of the applicant;
- (b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article. [IC 24-4.4-2-402 (2)]

16. What is evidence of compliance with the financial responsibility, character and fitness requirements of an applicant or one of the individuals described to in Item 15, above?

Answer – In addition to other background checks considered necessary by the Director, each of the individuals described in Item 15, above, will have their credit histories reviewed and officers will be required to undergo a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation. [IC 24-4.4-2-402 (4)]

17. What financial standards must an applicant meet to qualify for a first lien mortgage license?

Answer – Like applicants for consumer loan licenses, an applicant for a first lien mortgage license must provide a CPA review or audit level financial statement showing a minimum \$100,000 net worth and \$50,000 liquid assets. The Department established these financial standards for consumer loan licensees in 2000 and has determined that at least initially the same standards should be applicable to first lien mortgage licensees. In addition, applicants for first lien mortgage licenses will be required to provide the Department with a \$100,000 surety bond.

18. Do fingerprints have to be submitted for any individuals described in Item 15?

Answer – Yes, officers described in Item 15 will be required to submit fingerprints to the Department or to the Indiana State Police Department, as appropriate. The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check.

19. How do I obtain a criminal background check and what does it cost?

Answer - The Department is working with the Indiana State Police Department to develop procedures and pricing for the processing of these requests. When finalized, these procedures will be included on the Department's website.

20. What records am I required to maintain as a licensee under the new First Mortgage Law?

Answer – Every licensee shall maintain records in a manner that will enable examiners for the Department to determine whether the licensee is complying with the new First Mortgage Law. The record keeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The Department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The Department shall be given free access to the records wherever the records are located. Records concerning any first lien mortgage transaction shall be retained for two (2) years after the making of the final entry relating to the transaction, but in the case of a revolving first lien mortgage transaction, the two (2) years required under this subsection is measured from the date of each entry relating to the transaction. [IC 24-4.4-2-405 (1)]

21. What annual filing am I required to make relating to the first lien mortgages I originate?

Answer – Every licensee shall file not more often than annually with the Department financial statements (on a form prescribed by the Department under the NMLS) relating to all first lien mortgage transactions originated by the licensee. [IC 24-4.4-2-405 (2)]

22. What information must I keep up-to-date with the Department?

Answer – There are two types of information you must update: one relates to the basic information about the licensee and the second relates to illegal activities by the principals of the licensee.

First, a licensee is required to notify the Department if the licensee:

- (a) has a change in name, address, or any of its principals;
 - (b) opens a new branch, closes an existing branch, or relocates an existing branch;
 - (c) files for bankruptcy or reorganization; or
 - (d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities;
- not later than thirty (30) days after the date of the occurrence of such event. [IC 24-4.4-2-405 (3)]

Second, a licensee is required to notify the Department if a key officer or director of the licensee:

(a) is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or
(b) has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;
not later than thirty (30) days after the date of the occurrence of such event. [IC 24-4.4-2-405 (4)]

23. If I am a creditor in a first lien mortgage transaction, what obligation do I have relating to disclosure of information about various property tax deductions?

Answer – Under IC 24-4.4-2-501, a creditor in a first lien mortgage transaction must comply with IC 6-1.1-12-43 if the creditor is also the closing agent as defined in IC 6-1.1-12-43 (a)(2).

24. If I am a creditor in a first lien mortgage transaction, what obligation do I have to provide an accurate payoff amount to the debtor?

Answer – Under IC 24-4.4-2-201 (1), a creditor or mortgage servicer is required to provide an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

- (a) one hundred dollars (\$100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and
- (b) the greater of:
 - (i) one hundred dollars (\$100); or
 - (ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request.

25. What new provisions are applicable to transactions commonly known as “short sales?”

Answer – A "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. If a first lien mortgage transaction is delinquent for at least sixty (60) days and a written offer is received in connection with a proposed short sale, the creditor, servicer, or the creditor's agent must acknowledge receipt of the offer not later than ten (10) business days after the date of the offer. Further, not later than thirty (30) business days after receipt of an offer for a proposed short sale, the creditor, servicer, or creditor's agent is required to either accept or reject the offer. [IC 24-4.4-2-201 (2)]

Indiana Department of Financial Institutions, 30 South Meridian Street, Suite 300, Indianapolis, IN 46204
Local (317) 232-3955 - Toll Free (800) 382-4880 www.in.gov/dfi

Similar provisions have been adopted in the Uniform Consumer Credit Code relating to proposed short sales in connection with second mortgages on consumer credit sales and loans. [IC 24-4.5-2-209 (4) and IC 24-4.5-3-209 (4)] Finally, the Home Loan Practices Law has also been amended to provide that failure to make timely responses to a proposed short sale constitutes a prohibited lending practice. [IC 24-9-3-6]